

## **REMARKS**

### **1. Summary of the Office Action**

The Office Action objected to the drawings under 37 C.F.R. § 1.83(a) as allegedly not showing every feature of the invention specified in the claims. Further, the Office Action rejected claims 21, 23-37, and 39-42 under 35 U.S.C. § 112 as allegedly failing to comply with the written description requirement and being indefinite. Moreover, the Office Action rejected claims 36-37 and 39-40 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter.

### **2. Status of the Claims**

For purposes of clarity, and to expedite prosecution, Applicant has cancelled claims 21, 23-37, and 39-42, and replaced these cancelled claims with new claims 43-62. New claims 43 and 59 are independent and the remainder are dependent. Each new claim substantially corresponds to a cancelled claim, and the general subject matter of the new claims is substantially the same as that of the cancelled claims.

### **3. Response to Objections to the Drawings**

The Office Action objected to the drawings as allegedly failing to show every feature of the invention that was specified in the claims. In particular, the Office Action stated that the third and fourth port control sections being connected to a peripheral apparatus should be shown in the drawings.

Applicant has removed any recitation of the third and fourth port control sections being “connected to” a peripheral apparatus. Furthermore, Applicant’s claims 43 and 59 now recite that the third and fourth data sections are “communicatively coupled” to the peripheral apparatuses. Support for this modification can be found throughout Applicant’s Specification. For instance, Applicant’s Abstract describes Applicant’s invention as having “at least one third ports (9) for communicating with at least one of further switch fabric (15) or peripheral

apparatuses (16).” Furthermore, paragraph 0041 of Applicant’s Specification (as published) describes a “connection” being established “between the voice data section 5 of port 7 and a peripheral apparatus 16 via a third port 9.” Additionally, Applicant’s use of the terms “communicate,” “communication,” and “communicating” as used throughout Applicant’s Specification is sufficiently broad to encompass both direct and indirect communication. *See, e.g., Applicant’s Specification (as published) at paragraphs 0004-0005, 0009, 0017, and 0021.* Thus, Applicant’s Specification clearly sets forth the basis of this claim language.

Therefore, the drawings show every feature of the invention specified in the claims as amended, and Applicant respectfully requests the objection to the drawings be withdrawn.

#### **4. Response to § 112 Rejections**

The Office Action rejected claims 21, 23-37, and 39-42 for allegedly not describing how the third and fourth port control sections connect to the respective peripheral apparatuses in an adequate fashion. As stated in Section 3 of this response, Applicant has removed any recitation of the third and fourth port control sections being “connected to” a peripheral apparatus. Applicant submits that, for the reasons set forth in Section 3, these amendments are sufficient to overcome the rejection. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

The Office Action also rejected claims 21, 23-37, and 39-42 for allegedly failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the Office Action alleged that the use of several terms in the claims was unclear.

First, the Office Action alleged the use of the phrase “logically distinct” in the claims was unclear. Applicant has removed this phrase from all claims, and therefore respectfully requests that this rejection be withdrawn.

Second, the Office Action also alleged the use of the phrase “connected to” in the claims was unclear. As discussed in Section 3 of this response, Applicant has removed this phrase from the claims. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

Third, the Office Action also alleged the use of the phrase “as a result of communication between the computer apparatus and the first switch fabric” is unclear. Again, Applicant has removed this phrase from the claims, and Applicant respectfully requests that this rejection be withdrawn.

Fourth, the Office Action also alleged that the relationship between the first and second ports and the third and fourth ports, respectively, is not clear. The claims now recite that a first connection can be established between the first voice data section and the third voice data section, and that a second connection can be established between the second voice data section and the fourth voice data section. Applicant submits that this claim language is sufficiently clear. Furthermore, Applicants Specification (as published) describes the general relationship between these ports, and well as how these ports can be interconnected, in paragraphs 0040-0045. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

## **5. Response to § 101 Rejections**

The Office Action rejected claims 36-37 and 39-40 under 35 U.S.C. § 101 for allegedly being directed to non-statutory subject matter. In particular, the Office Action alleged that the method recited in the claims was directed to a general purpose computer. The Office Action cited to *Ex Parte Langemyr*, 89 USPQ2d 1988 (Bd. Pat. App. & Int. 2008), for the principle that use of a computer to perform the claimed method does not result in statutory subject matter under 35 U.S.C. § 101.

The Supreme Court has held that a mathematical formula, with “no substantial practical application except in connection with a digital computer,” is not patentable subject matter, because allowing such a patent “would wholly pre-empt the mathematical formula and in

practical effect would be a patent on the algorithm itself.” *Gottschalk v. Benson*, 409 U.S. 63, 71-72 (1972). *Ex Parte Langemyr* is directed to the narrow issue of “whether ineligible mathematical manipulations of data become eligible subject matter when the manipulations are performed on a computer, where the data represents physical systems, and where the method includes a step of outputting a model.” 89 USPQ2d at 1990.

In contrast to *Ex Parte Langemyr*, claims 59-62 (the re-written versions of claims 36-37 and 39-40) are directed to a computer apparatus commanding control sections in a switch fabric. By issuing commands to these control sections, the state of the switch fabric is changed to allow peripheral apparatuses to communicate with one another. Thus, claims 59-62 are clearly not directed to mathematical formulae.

Furthermore, after *Ex Parte Langemyr* was decided, the Federal Circuit has clarified that the “machine-or-transformation test . . . is the governing test for determining patent eligibility of a process under [35 U.S.C.] § 101.” *In re Bilski*, 545 F.3d 943, 956 (Fed. Cir. 2008). Under this test, a process must be “tied to a particular machine or [bring] about a particular transformation of a particular article” to be patentable. *Id.* at 957. Such a process “does not pre-empt all uses of a fundamental principle in any field but rather is limited to a particular use, a specific application.”

Claims 59-62 meet both prongs of the machine or transformation test. The steps of claim 59, for example, recite control sections of the switch fabric being commanded by a machine – namely, a computer apparatus. However, as stated above, this computer apparatus does not perform a mathematical formula, as was the case in *Benson* and *Langemyr*. Thus, claim 59 does not pre-empt all uses of a fundamental principle.

Moreover, claim 59 also involves a transformation. In particular, the computer apparatus commands a first control section to establish a first connection between a first voice data section and a third voice data section, and the computer apparatus also commands a second control

section to establish a second connection between a second voice data section and a fourth voice data section. Doing so allows peripheral apparatuses coupled to the switch fabric to communicate with one another. Thus, claim 59, as well as claims 60-62 which depend from claim 59, results in a physical transformation of the switch fabric, from a state in which the peripheral apparatuses cannot communicate with one another to one in which they can.

Accordingly, Applicant submits that claims 59-62 are patentable subject matter under 35 U.S.C. § 101, and respectfully requests that this rejection be withdrawn.

#### **6. Conclusion**

In view of the foregoing, Applicants respectfully request favorable reconsideration and allowance of all pending claims. Should the Examiner wish to discuss this case with the undersigned, the Examiner is invited to call the undersigned at (312) 913-3361.

Respectfully submitted,

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